



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:)
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Gary K. Michelson, M.D.)
)
Serial No.: 09/412,082) Group Art Unit: 3764
)
Filed: October 4, 1999) Examiner: M. Brown
)
For: METHOD FOR INSERTING)
FRUSTO-CONICAL INTERBODY)
SPINAL FUSION IMPLANTS)

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

REPLY TO OFFICE ACTION UNDER 37 C.F.R. § 1.111

The present application is a continuation of U.S. Application No. 08/480,904 (now U.S. Patent No. 6,210,412). Since the claimed subject matter of the present application is similar to that of the '412 patent mentioned above, Applicant is submitting herewith a Terminal Disclaimer of U.S. Application No. 09/412,082 over U.S. Patent No. 6,210,412.

In reply to the Office Action dated April 10, 2001 (Paper No. 8), it is submitted that claims 18-37 are allowable over the art of record for at least the reasons stated herein below.

In the Office Action, the Examiner rejected claims 18-24 and 29-37 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,263,953 to Bagby.

Bagby '953 teaches a coil fusion implant that is inserted into the disc space in a reduced diameter state. Upon insertion, the coil gradually expands to exert a force

radially outward (see abstract). Bagby '953 further teaches that "the bony surfaces are next prepared for implantation by cutting *cylindrical* longitudinal beds into them in configurations complementary to the exterior of the coils 10" (column 6, lines 30-34) (emphasis added).

Independent claim 18 includes the step of forming a bore with opposed arcuate portions in angular relationship to one another. Bagby '953 does not teach, disclose, or suggest the step of forming a bore having opposed arcuate portions in an angular relationship to one another as recited in independent claim 18.

The Examiner rejected dependent claims 25 and 26 under 35 U.S.C. § 103(a) as being unpatentable over Bagby '953 in view of U.S. Patent No. 4,878,915 to Brantigan. The Examiner also rejected dependent claims 27 and 28 under 35 U.S.C. § 103(a) as being unpatentable over Bagby '953 in view of Brantigan '915 and U.S. Patent No. 3,875,595 to Froning. Applicant submits that the Examiner's rejection of these claims are rendered moot at least in view of the patentability of independent claim 18, which Applicant submits is in condition for allowance. Thus, Applicant submits that dependent claims 25-28 are also allowable because they depend directly or indirectly from an independent claim which is believed to be allowable over the cited references.

Applicant submits that independent claim 18 is patentable and that dependent claims 19-37 dependent from independent claim 18, or claims dependent therefrom, are patentable at least due to their dependency from an allowable independent claim.

Applicant submits that the rejections of claims 18-37 over the art of record have been overcome.

If there are any fees due in connection with the filing of this response, please charge our Deposit Account Number 50-1066. If a fee is required for an extension of time under 37 C.F.R. § 1.136 not accounted for in the papers accompanying this response, such an extension is requested and the fee should also be charged to our Deposit Account.

Respectfully submitted,

MARTIN & FERRARO, LLP

Dated: June 28, 2001

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